

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1556 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ISHWARDAS M KARIYA

Versus

DISTRICT SUPERINTENDENT OF POLICE

Appearance:

1. Special Civil Application No. 1556 of 1990
MR NALIN K THAKKER for Petitioner No. 1
Ms.Pandit, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 20/11/2002

ORAL JUDGEMENT

The short facts of the case are that the petitioner was formerly employee of erstwhile princely State of Junagadh. That State was merged firstly in the

State of Saurashtra on 20.1.1999. The petitioner continued in services of State of Saurashtra. Then the State of Saurashtra was merged in the new bilingual State of Bombay and ultimately in the State of Gujarat. It is the case of the petitioner that as per the Junagadh State Service Rules which were framed in exercise of sovereign functions, the age of retirement of the employee was 60 years and this service condition was to be protected. The contention of the petitioner is that the service conditions of the erstwhile employees of the princely State which merged in the State constituted after independence of the country can not be changed to their disadvantage without prior approval of the Central Govt. Reference in this regard has been made to the provisions of Sub.sec.7 of Section 115 of the Bombay Reorganisation Act, 1960. Reference has also been made to the provisions made under Bombay Reorganisation Act, 1960. It has been submitted that in the case of one Shri T.K.Budecha the civil court had passed a decree holding that he can be retired only at the age of 60 years and the case of the petitioner is that he is also similarly situated, and therefore, the petitioner who is asked to retire at the age of 58 years is illegal and he should have been allowed to continue in service upto the age of 60 years and his pension is also required to be fixed accordingly.

2. Before I deal with the contentions raised on behalf of the petitioner it is worthwhile to note that in the para 6 of the CAV judgment rendered earlier Special Civil Application Nos 2691/89, 5124, 1556 and 6353/96 this court (Coram: S.K.Keshote,J) on 20.1.2001 this court had ordered as under:

"In the result, these special civil applications are disposed of in the terms that these petitions be considered as representations of the petitioners by the Chief Secretary of the State of Gujarat and he may place the same for consideration and decision of the High Power Committee to be constituted under his Chairmanship with three other members, i.e. Secretary, Finance Department, Secretary, Home Department and the Secretary, Law Department. The matters are to be decided by the said committee within a period of three months from the date of receipt of writ of this order. If the petitioners or any of the petitioners desire opportunity of hearing it may be afforded accordingly. Where the claim of the petitioners

is acceptable, they shall be entitled to all consequential benefits which are to be determined and paid to them within two months next together with interest there @ 12% p.a. from the due date. Where the claims of the petitioners are not acceptable, a reasoned order be passed and a copy of the same be sent to the petitioners by Regd. post AD. In case where the order of the High Power Committee goes adverse to the petitioners, liberty is granted to them for revival of these special civil applications. Rule and special civil applications stand disposed of accordingly with no order as to costs."

3. After the aforesaid judgment passed by this court, the High Power Committee of the State Govt. considered the matter and on 19.2.02 the decision is rendered of rejecting the request of the petitioner on the ground that the petitioner had voluntarily accepted the application of Bombay Civil Service Rules ("BCSR" for short) and had also not given consent for applicability of pension as per Junagadh State and had also availed of various benefits as per the provisions of BCSR applicable in Gujarat State including payscale and others and therefore it was decided by the authority that when the petitioner has voluntarily agreed to be abided by the provisions of BCSR applicable in Gujarat State and has also availed of various benefits the request of the petitioner can not be accepted. Since the liberty was granted for revival of the special civil application the petitioner preferred MCA No.984/02 in SCA No.1556/90 and as per the order dated 4.9.02 passed by this court (Coram:A.H.Mehta,J) the SCA No.1556/90 was ordered to be revived and accordingly this petition is listed for hearing before this court.

4. It is also worthwhile to mention that the petitioner together with MCA had also brought on record the last order passed by the High Power Committee dated 19.2.02 and has brought on record the subsequent grounds on account of last order dated 19.2.02 and the said amendment also came to be granted by this court as per order 4.9.02 passed in the aforesaid miscellaneous civil application. Under the circumstances, the main petition is, once again, taken up for hearing.

5. Mr.Thakkar, learned counsel appearing for the petitioner mainly contended that in view of section 81(6) of the State Reorganisation Act as well as section 115(7) of Bombay Reorganisation Act the service conditions of

the petitioner should not have been varied to his disadvantage except with the previous approval of the Central Govt. Mr.Thakkar submitted that as per Clause 13 of Rule 241-A of Junagadh Rules, which is reproduced at page 9 of the petition, the superannuation is admissible on attaining age of 60 years and he submitted that therefore even after the petitioner was absorbed in the then Saurashtra State as well as in the then Bombay Bilingual State and thereafter in Gujarat State the age of retirement of the petitioner should not have been varied from 60 years to 58 years unless the prior approval is granted by the Central Govt. Mr.Thakkar submitted that there is no dispute on the point that the approval of the Central Govt is not granted and he therefore submitted that the action of the Govt of retiring the petitioner at the age of 58 years is illegal and the petitioner would be entitled to consequential benefits. Mr.Thakkar submitted that the voluntary action of the petitioner would not operate as a bar to the petitioner in raising the contentions raised in this petition as well as even if such voluntary action is taken by the petitioner there can not be any estoppel against the statutory provisions and therefore the decision of the High Power Committee dated 19.2.02 is wrong and can not be sustained in the eye of law and therefore he submitted that the prayers made in the petition require to be granted.

6. Mr.Thakkar has relied on the decisions of the Apex Court in the matters of (i) Bholanath J.Thaker vs State of Saurashtra reported in AIR 1954 SC 680, (ii) Takhetray Shivdatray Mankad vs State of Gujarat reported in AIR 1970 SC 143, (iii) Paira Lal vs State of Punjab reported in AIR 1997 SC 3420 to contend that unless express approval is granted by the Central Govt the service conditions of the erstwhile State employees, which in the present case Junagadh State, can not be varied to the disadvantage of the employee concerned. Mr.Thakkar also relied on the decision of this court in the matter of Amrutlal J.Bhatt vs State Govt of Gujarat reported in 1988(2) GLR 841 for contending that in a matter when the Civil Court granted the decree the Govt had not acted pursuant to the decree of the civil court and this court had issued mandamus to the Govt to act as per the decree of the civil court for its implementation. Mr.Thakkar has also relied upon the decision of the Apex Court in the matter of Takhatray Shivadatray Mankad vs State of Gujarat reported in 1990(1) GLR 34 (SC) for contending the existence of provisions of Rule 241-A of the Act. Mr.Thakkar also relied upon the judgment of the Apex Court in the matter of Air India vs Nargesh Meerza

reported in 1982(1) SLR (SC) 117 for contending that there can not be any estoppel against statute or against any constitutional provisions. He, therefore, submitted that when there is no approval obtained from the Central Govt the action of the State Govt of retiring the petitioner at the age of 58 instead of 60 years is illegal, arbitrary and the petitioner would be entitled to consequential benefits as prayed for in the petition.

7. On behalf of the State Govt, Ms.Pandit, Ld.AGP has supported the order passed by the Committee, dated 19.2.02 and has mainly submitted that since there was voluntary action on the part of the petitioner, the petitioner can not claim the benefits of service conditions prevailing in erstwhile State of Junagadh and the additional reason is that the petitioner had voluntarily availed of the benefits of the provisions of BCSR subsequently also. It has been submitted that the action of the State Govt of retiring the petitioner at the age of 58 years as per the provisions of BCSR is legal and valid.

8. In view of the above, the first aspect which is required to be examined is the effect of true and correct interpretation of proviso of section 115(7) of Act of 1956 and proviso of section 81(6) of the Act 1960 which read as under:

"Section 115(7) of 1956 Act:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in subsection (1) or subsection (2) shall not be varied to his disadvantage except with the previous approval of the Central Govt."

Section 81(6) of 1960 Act:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person provisionally or finally allotted to the State of Maharashtra or Gujarat under this section shall not be varied to his disadvantage except with the previous approval of the Central Govt."

On true and correct interpretation of the aforesaid proviso of the relevant Acts, it appears that it is only when the State has to alter the service conditions of the

employee concerned of the former State, the previous approval of the Central Govt is required. In my view, the proviso would be applicable in a matter when the State has to undertake unilateral action of altering the service conditions of the employee, but if it is an action of voluntary nature of the employee concerned or on account of any bilateral action no such approval of the Central Govt is required. For example, when the employee of a particular cadre agrees to be abided by the new Rules of the State or the existing Rules of the State to which their services are merged, then it would not be a case of altering the service conditions by the State Govt by unilateral action. Therefore, in the matter of voluntary action on the part of the employee of submitting or declaring to be abided by the existing rules of the State whose services are merged, there is no question of obtaining any prior approval from the Central Govt and therefore Mr.Thakkar is not right in contending that in all circumstances, even in a case of voluntary action on the part of the employee concerned, prior approval of the Central Govt is required to be obtained.

9. There is one additional reason for giving such interpretation to the aforesaid proviso of the relevant Act because the relationship of an employer and employee is a contractual relationship and it may be that the rights of the employer and employee are governed by the statutory rules which may be framed by the Govt, from time to time, but, in the matter of service conditions of an employee there is always a scope for voluntary action with the consent of both the parties. It is only when the unilateral action is to be taken against the will or desire of any employee or employer, as the case may be, such question of asserting protection or benefit under the rules may arise. Therefore, the aforesaid proviso of the relevant Act are required to be interpreted accordingly and hence only when there is no voluntary action on the part of employee is concerned, it can be construed that there is power with the State Govt unilaterally to alter the service conditions with the prior approval of the Central Govt. In a situation or case where the employee voluntarily agrees for acceptance of new rules or for alteration of service conditions as per the new rules, I am of the view that neither the proviso would have any application and hence the prior approval of the Central Govt is not required .

10. In view of the above, the judgments of the Apex Court upon which the reliance is place by Mr.Thakkar are of no help to the petitioner, more particularly, because in none of such cases that the facts were that the

employee concerned though voluntarily accepted to be abided by the new rules of the State in which the services were merged. Therefore, of no help to the petitioner, more particularly, because in none of such cases that the facts were that the employee concerned though voluntarily accepted to be abided by the new rules of the State, the services were merged. Therefore, in my view, the judgments of the Apex court in the matters of Bholanath J.Thaker vs State of Saurashtra reported in AIR 1954 SC 680 as well as in Paira Lal vs State of Punjab reported in AIR 1997 SC 3420 would not be applicable to the facts of the present case. Since it is not a matter of compulsory retirement the judgment of the Apex Court in the matter of Takhetray Shivdatray Mankad vs State of Gujarat reported in AIR 1970 SC 143 would also not be applicable to the facts of the present case.

11. So far as the case of Amrutlal J.Bhatt (supra) is concerned, there was a decree of the civil court and the State Govt had not acted pursuant to the said decree of the civil court and therefore this court had to give directions to the respondents to take consequential steps pursuant to the decree of the civil court because the decree attained finality binding the rights of parties concerned. In my view merely in case of some of the employees the civil court has passed a decree directing the said employees to retire at the age of 60 years would not give any right to the petitioner to assert that he should also be retired at the age of 60 years because the distinguishing feature in the present case is that there is no decree of the civil court in favour of the petitioner nor it has come on record that the case of the petitioner is the same as that of persons in whose favour the decree was passed by the civil court. Apart from that there is a distinguishing feature that the petitioner himself had agreed for being abided by the provisions of BCSR and the petitioner himself has availed of the benefits conferred upon him by the application of the provisions of BCSR. In my view, therefore, the aforesaid decision in the matter of Amrutlal J.Bhatt (supra) is of no help to the petitioner. As observed earlier, in the matter of voluntary action on the part of an employee concerned, it can not be said that there is any alteration in the service conditions by the State Govt unilaterally and as such no prior approval of the Central Govt would not be required. Therefore, the aforesaid decision would not be applicable to the facts of the present case. The petitioner is not right in contending that since the prior approval of the Central Govt is not obtained the decision of the State Govt to retire him at the age of 60 years is unlawful and

illegal.

12. The aforesaid takes me to the last contention raised by Mr.Thakkar that there can not be any estoppel against statutory provisions and he submitted that the alleged voluntary action on the part of the petitioner would not operate as bar to the petitioner in asserting his rights as provided under the Statute. There can not be any dispute that the principles of promissory estoppel would not operate against any statutory provision or any constitutional mandate. However, at the same time, as observed earlier, when upon the interpretation of aforesaid proviso it is transpired that in the matter of voluntary action on the part of employee concerned, the proviso would not be applicable at all, it can not be said that any right is conferred upon the petitioner by the statute. Had it been the case of unilateral action on the part of the State Govt of altering the service conditions, possibly the petitioner could have asserted his right of challenging the said action on the ground of nonavailability of prior approval of the Central Govt. Such is not the case in the present petition. Therefore, even if the principles as laid down in the matter of Air India vs Nargesh Meerza reported in 1982(1) SLR 117 are accepted the same is of no help to the petitioner.

13. In addition to the above, certain admitted facts are required to be taken note of and they that on 20.1.1949 itself the State of Junagadh has merged in the State of Saurashtra and since July, 1949 the petitioner's services were under the State of Saurashtra. When the services of the petitioner were merged in the bilingual Bombay State somewhere in 1956 the petitioner had voluntarily given his consent for accepting the payscales of Bombay State and for being abided by the provisions of BCSR. Not only that but it has also come on record that the petitioner had not given consent for option for pension as per rules of State of Junagadeh. Moreover, after giving consent to be abided by the provisions of BCSR and for payscale as provided under BCSR the petitioner has also availed of benefits of promotion, LTC etc as per the Rules. In that view of the matter, it appears that at the time when the petitioner reached age of retirement, after a period of more than 25/30 years, a grievance is raised for asserting his right of service of conditions in the erstwhile State of Junagadh. In my view such grievance even otherwise is also not tenable. In any event, the fact remains that the petitioner worked upto the age of 58 years only and he was asked to retire at the age of 58 years treating him on par with other employees of the State Govt under the provisions of BCSR.

Since the petitioner, in any case, has not worked after the age of 58 years until reaching 60 years the petitioner would not be entitled to either wages for the aforesaid period of two years nor would he be entitled to fixation of his pension as if his services were continued upto the age of 60 years. As such, when the petitioner has availed of the benefits including the pension, as per the provisions of BCSR, it can hardly be contended on the part of the petitioner that he should have been continued in service upto the age of 60 years and his pension be revised accordingly.

14. In view of the aforesaid discussion, I find that the decision of the State Govt of retiring the petitioner at the age of 58 years and the decision of the High Power Committee dated 19.2.02 are legal and valid and there is no substance in the petition. The petition, therefore, fails and is dismissed. Rule is discharged. There shall be no order as to costs.

20.11.02 (JAYANT PATEL, J)